

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE : BANKRUPTCY NO. 05-13550
: CHAPTER 7
JOHN S. LONG and MILDRED J. LONG, :
DEBTORS :
:
:
JOHN C. MELARAGNO, ESQ., : DOCUMENT NOS. 27, 29 and 30
TRUSTEE, Movant :
:
vs. :
SIMMONS COOPER, LLC, Respondent :

MEMORANDUM AND ORDER

The Trustee, John C. Melaragno, has filed a MOTION TO APPROVE RECEIPT OF FUNDS and Simmons Cooper, LLC has filed an APPLICATION FOR ALLOWANCE OF FINAL COMPENSATION FOR SPECIAL COUNSEL. The record appears to require amplification.

The Trustee's MOTION FOR LEAVE TO APPOINT SPECIAL COUNSEL indicates that the engagement was to recover for "injuries he sustained in an accident in which he was a passenger" as a result of "an accident which occurred on September 20, 2001."

The Trustee's MOTION TO APPROVE RECEIPT OF FUNDS indicates that the recovery was obtained "in the asbestos litigation." This discrepancy requires some explanation.

It is further noted that the application for appointment of counsel indicated that "the Trustee proposes to pay for the services of Jack Daugherty, Esq., on a contingent basis of 25% of the amount recovered prior to filing a pre-trial statement, 33⅓% of the amount recovered after filing the pre-trial statement, and 40% on appeal plus costs and expenses." There is no indication in the Trustee's MOTION TO APPROVE RECEIPT OF FUNDS that any appeal was taken and therefore the \$875,926.60 requested by Simmons Cooper, being calculated at 40%, is improper.

It is therefore ORDERED that the Trustee shall file a supplement to the motion on or before February 20, 2008. It is FURTHER ORDERED that a hearing to consider the Motion to Approve Receipt of Funds, the Application for Allowance of Compensation and the Trustee's Supplement is fixed for March 10, 2008 at 11:10 a.m., in the U.S. Courthouse, Bankruptcy Courtroom, 17 South Park Row, Erie, PA. Only 10 minutes have been reserved on the Court's calendar. All parties may participate by telephone pursuant to instructions on the Court's website.

Dated: February 6th, 2008

FILED

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CLERK, U.S. BANKRUPTCY COURT
WEST. DIST. OF PENNSYLVANIA
ERIE OFFICE


Warren W. Bentz
United States Bankruptcy Judge